

SEP 6

: Acting Director
Indian Health Service

RFO: 88-0

: Request for Opinion 88-8
May Tribes contract under P.L. 93-638 for Management of Government Quarters
: Richard Kisereng
Assistant General Counsel
Public Health Division, Office of the General Counsel

Attached is a memorandum from the Acting Director, Division of Indian Resources Liaison transmitting a request from the Oklahoma City Area Indian Health Service (IHS) on behalf of the Choctaw Nation regarding "...whether the tribe may contract for the functions of assigning quarters, establishing rental rates and collecting rents as applicable to the eleven employee quarters at the Talihina Indian Hospital." The Talihina hospital is currently operated by the Choctaw Nation under a P.L. 93-638 contract. Although the quarters are not part of the 638 contract, they do house hospital employees who are either under the Intergovernmental Personnel Act, a Memorandum of Agreement, or direct hire to the tribe.

The question presented here is whether these functions are contractable under P.L. 93-638 or are considered federal management activities not by themselves contractable programs or portions of programs.

A second question has to do with disposition of rental monies. It is my understanding that any revenue derived from rentals of government quarters are currently deposited into Miscellaneous Receipts of the Treasury and eventually find their way back to IHS to be used for maintenance and repair of the quarters. If these functions are contractable under P.L. 93-638, and the tribe assumed management of the quarters, would the rents continue to be deposited to the Indian Health Service or go to the Tribe?

We are concerned that the operation of quarters continue to be for the purpose of improving Indian health, and not providing a windfall profit.

Robert C. Krennburg, M.D.
L.H. Ivey

Attachments
Incoming Correspondence

cc: Ms. Luana Reyes
Dr. Robert Birch
Dr. H.C. Townsley



Memorandum

Date . AUG 21 1985

From Acting Director
Division of Indian Resources Liaison

Subject Contractibility of Government Quarter

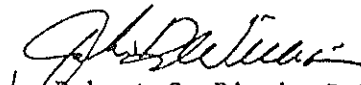
To Chief, Legislation/Regulations Branch

Attached please find a memorandum from the Director, Oklahoma City Area Indian Health Service regarding the contractibility of government quarters by tribal organizations contracting under the authority of the Indian Self-Determination Act, Public Law (P.L.) 93-638.

As more tribal organizations contract for entire Indian Health Service, Service Unit functions under P.L. 93-638, I am sure this issue will surface more and more.

Accordingly, please advise this office if P.L. 93-638 contractors can contract for the management of government quarters including assigning quarters, establishing rental rates, collecting rental rates and the maintenance and repair of quarters buildings and grounds.

Should you have any questions regarding this matter please advise.


Robert C. Birch, D.D.S.
Dental Director

Attachments

AUG 13 1985

H. C. Townsley, M.D.
Area Director, Oklahoma City Area IHS

Inquiry from Choctaw Nation Re: Contractability of Government Quarters

Robert Birch
IRL, Indian Health Service
Rockville, Maryland

Mr. Greg Pyle, Assistant Chief, Choctaw Nation of Oklahoma, has inquired as to whether the tribe may contract for the functions of assigning quarters, establishing rental rates and collecting rents as applicable to the eleven employee quarters at the Talihina Indian Hospital. I have refrained from giving a definite response pending a reply from your office.

While I am aware that P.L. 88-459 clearly authorizes government agencies to administer government employee quarters and proscribes transference of this authority to a non-Federal entity; I am also sensitive to long range Congressional intent regarding self-determination as prescribed by P.L. 93-638.

The questions that arise are:

1. Are we prohibited from contracting these functions to the tribe by P.L. 88-459?
2. Under what mitigating circumstances may exceptions be made to this statute?
3. Can we interpret P.L. 93-638 as a specific provision applying to this specific situation?
4. Inasmuch as the aforementioned statute is of general application, does it control the latter specific statute (P.L. 93-638) due to priority of enactment?
5. Do we have the discretion to regard each as effectively dealing with entirely different and indeed separate situations?

An early response will be appreciated. If legal determinations are required, please take necessary steps to solicit this information from our legal counsel.

/s/ H. C. Townsley, M.D.

H. C. Townsley, M.D.
Area Director
Oklahoma City Area IHS

OD:HCTOWNSLEY:DAd:cwc:8/5/85

8/26 - Letter in response received - To Dm